

NORTH CAROLINA GENERAL ASSEMBLY  
1981 SESSION

CHAPTER 960  
HOUSE BILL 629

AN ACT TO ALLOW NEW HANOVER COUNTY TO PROHIBIT ACTS OF  
DISCRIMINATION IN EMPLOYMENT AND HOUSING BASED ON RACE,  
COLOR, NATIONAL ORIGIN, RELIGION, SEX, HANDICAP OR AGE.

The General Assembly of North Carolina enacts:

**Section 1.** Authority to Adopt Ordinances. The Board of Commissioners of New Hanover County may adopt ordinances to prohibit discrimination in employment and housing based on race, color, national origin, religion, sex, handicap or attained age between 40 and 70 years, inclusive. To assist in the enforcement of these ordinances, the Board of Commissioners may authorize or create an agency or commission of the County of New Hanover (hereafter called "The Agency") to take such actions and to have such powers as might be appropriate and necessary to implement said ordinances including, but not limited to, the power to receive, initiate, investigate, seek to conciliate, hold hearings on and pass upon complaints, to mediate alleged violations of such ordinances, to issue orders against persons it finds, after notice and hearing, to have violated such ordinances and to seek court enforcement of such orders.

This legislation is not intended to expand the authority or powers of the local enforcing agency beyond those covering any specific employer by federal laws, rules or regulations in effect at the time in question. The agency may, as part of such order, require any such person to cease and desist from unlawful practices and to engage in such additional remedial action as may be appropriate including, but not limited to, requiring such person to do the following:

- (a) to hire, reinstate or upgrade aggrieved individuals, with or without back pay;
- (b) to admit aggrieved individuals or to allow such individuals to participate in guidance programs, apprenticeship training programs, on-the-job training programs, or other occupational training or retraining programs, and to utilize objective criteria in the admission of such individuals in such programs;
- (c) to submit to the agency for approval or disapproval, plans to eliminate or reduce imbalance with respect to race, color, national origin, religion, sex, handicap, or age;
- (d) to provide technical assistance to persons subject to this act to further compliance with the act;
- (e) to report as to the manner of compliance;
- (f) to post notices in conspicuous places in the form prescribed by the agency.

**Sec. 2.** Definition of "Person". As used in this act, the word "Person" includes one or more individuals, governments, governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations (except a bona fide private membership club, other than a labor organizations which is exempt from taxation under 501(c) of the Internal Revenue Code of 1954), trustees, trustees-in-bankruptcy or receivers.

**Sec. 3.** Judicial Review of Agency Orders. Judicial review of agency orders shall be in accordance with Article 4 of Chapter 150A of the North Carolina General Statutes provided, however, that the provisions of G.S. 150A-45 notwithstanding, petitions for judicial review shall be filed in the Superior Court of New Hanover County. The term "Agency", whenever used in Article 4 of the Chapter 150A of the North Carolina General Statutes, shall mean the agency as authorized or created by the Board of Commissioners of New Hanover County under the authority of this act.

**Sec. 4.** Enforcement of Agency Orders. (a) If within 60 days after entry of an order of the agency, a respondent has neither complied with nor sought review of such order, any aggrieved person or the agency may apply to the Superior Court of New Hanover County for an order of the court enforcing the order of the Agency.

(b) Within 30 days after the court's receipt of the petition for enforcement of the agency's order or within such additional time as the court may allow, the agency shall transmit to the court the original or a certified copy of the entire record of the proceedings leading to the order. With the permission of the court, the record may be shortened by stipulation of all parties. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for such additional costs as may be occasioned by the refusal. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

(c) The hearing on the petition for enforcement of the agency's order shall be conducted by the court without a jury. The court shall hear oral arguments and receive written briefs, but shall take no evidence not offered at the agency hearing; except that in cases of alleged irregularities in procedure before the agency not shown in the record, testimony thereon may be taken by the court; and except that where no record was made of the proceeding or the record is inadequate, the judge in his discretion may hear all or part of the matter de novo.

(d) The court shall issue the order requiring compliance with the agency's order unless it finds that enforcement of the agency's order would prejudice substantial rights of the party against whom the order is sought to be enforced because the agency's findings, inferences, conclusions, or decisions are:

- (1) in violation of constitutional provisions; or
- (2) in excess of the statutory authority or jurisdiction of the agency; or
- (3) made upon unlawful procedures; or
- (4) affected by other error of law; or
- (5) unsupported by substantial evidence in view of the entire record as submitted; or
- (6) arbitrary or capricious.

(e) If the court declines to enforce the agency's order for one of the reasons specified in paragraph (d) of this section, it shall either:

- (1) dismiss the petition; or
- (2) modify the agency's order and enforce it as modified; or
- (3) remand the case to the agency for further proceedings.

(f) Any party to the hearing on the petition for enforcement of the agency's order may appeal the court's decision to the appellate division under the rules of procedure applicable to other civil cases.

**Sec. 5.** (a) Civil Action for Unlawful Employment or Housing Practice. An ordinance adopted pursuant to this act may permit any complainant dissatisfied with the agency's final disposition of a matter to bring a civil action in the Superior Court Division of the General Court of Justice of New Hanover County against the person allegedly engaging in the unlawful practice. Such civil action for an unlawful employment or housing practice may not be brought more than one year after a charge thereof was filed with the agency or more than 60 days after the complainant's receipt of notification of the agency's final disposition of the matter, whichever is later.

(b) Injunctions; Equitable Relief. If the court finds that the respondent has engaged in or is engaging in an unlawful employment or housing practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment or housing practice, and order such action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay (payable by the person, firm, corporation or association as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the agency. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. No order of the court shall require the admission or reinstatement of an individual as a member of a union, or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled, or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, national origin, handicap or age or in violation of an ordinance adopted pursuant to this act.

(c) Attorney's Fee. In any action or proceeding under an ordinance adopted pursuant to this act, the court, in its discretion, may allow the prevailing party, other than the agency, a reasonable attorney's fee as part of the costs, and the agency shall be liable for costs the same as a private person.

**Sec. 6.** Discrimination on Account of Opposition to Unlawful Practices or Participation in Investigation, Proceeding, or Hearing. It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by an ordinance adopted pursuant to this act or because he has made a charge, testified,

assisted, or participated in any manner in an investigation, proceeding or hearing under such an ordinance.

**Sec. 7. Additional Authority of Agency.** To further assist in enforcement of ordinances authorized by this section, and in the investigations of violations of said ordinances, the agency may subpoena witnesses, administer oaths, and compel the production of evidence. If a person fails or refuses to obey a subpoena issued by the agency, the agency may apply to the General Court of Justice for an order requiring that its order be obeyed, and the court shall have jurisdiction to issue such orders after notice to all proper parties. No testimony of any witness before the agency pursuant to a subpoena issued in exercise of the power conferred by this section may be used against him on the trial of any criminal action other than a prosecution for false swearing committed on the examination. If any person, while under oath administered pursuant to this paragraph willfully swears falsely, he is guilty of a misdemeanor.

**Sec. 8. Access to Records.** The agency at all reasonable times, for the purposes of examination, shall have access to, and the right to copy, any evidence of any person being investigated that relates to an unlawful employment or housing practice under an ordinance adopted pursuant to the act and relevant to the charge under investigation. Information discovered during such an investigation shall not be made public by the agency until offered into evidence in an administrative hearing or judicial proceeding.

**Sec. 9. Public Records.** Public records concerning the investigation, conciliation or mediation of alleged violations of an ordinance enacted pursuant to this section are not subject to the provisions of G.S. 132-6 and G.S. 132-9.

**Sec. 10.** Chapter 315, Session Laws of 1979 is repealed.

**Sec. 11.** This act is effective July 31, 1981.

In the General Assembly read three times and ratified, this the 10th day of July, 1981.